

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,  
VACATION & XMAS AND FRINGE BENEFIT FUNDS;  
PLUMBERS AND GASFITTERS LOCAL 12; AND  
PLUMBERS' UNION NO. 12 LABOR MANAGEMENT  
COOPERATION TRUST FUND,

Plaintiffs

VS.

McGLONE PLUMBING, INC.

Defendant

Civil Action No.  
05-CV-11510

December 28, 2005

APPLICATION TO THE CLERK OF THE COURT  
FOR ENTRY OF JUDGMENT BY DEFAULT

Pursuant to Rule 55(b)(1) Fed.R.Civ.P., the above captioned Plaintiffs, by and through their attorneys, Robert M. Cheverie & Associates, P.C., hereby request the Clerk of this Court to enter judgment by default against Defendant McGlone Plumbing, Inc. (hereinafter "McGlone Plumbing") for sums certain as demonstrated below.

1. Defendant McGlone Plumbing, Inc. is a Massachusetts corporation engaged in the plumbing construction business.
2. Defendant McGlone Plumbing is party to a multi-employer Collective Bargaining Agreement ("CBA") with Plumbers and Gasfitters Local Union No. 12

(Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 3).

3. Defendant is not an infant, incompetent, or in the military service (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 10).

4. Pursuant to the terms of the relevant CBA, Defendant is contractually obligated to make fixed hourly rate payments to the Plaintiffs of sums certain for each hour worked by plumbers/apprentices employed to perform plumbing work on McGlone Plumbing's contracted projects (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 5).

5. Pursuant to the terms of the CBA, each month McGlone Plumbing must forward to the Plaintiffs' Fund Administrator a monthly report detailing the name of each plumber/apprentice in its employ for the prior month, the hours worked by each plumber/apprentice, and the Funds contributions owed on behalf of each employed plumber/apprentice (i.e. the product of the contractually fixed hourly Funds rates, multiplied by the hours worked) (See Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 6).

6. McGlone Plumbing submitted a Funds Report for plumbing work performed on contracted projects during the month of July 2005 demonstrating Funds contributions owed to Plaintiffs in the sum certain amount of ***Six Thousand Three***

**Hundred Eleven Dollars and Sixty-Four Cents (\$6,311.64)** (See Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 7).

7. Following numerous demands for payment of unpaid monthly contributions, Plaintiffs initiated collections litigation by filing dated July 18, 2005 for delinquent contributions owed for the months of April and June 2005 and all subsequent months that became due and owing during the pendency of the collection litigation.

8. McGlone Plumbing subsequently paid the April and June 2005 Funds contributions, but remains delinquent in payment to the Plaintiffs for the July 2005 Funds contributions in the sum certain amount of **Six Thousand Three Hundred Eleven Dollars and Sixty-Four Cents (\$6,311.64)**. Plaintiffs are entitled to receive this payment (See Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 7).

9. Pursuant to the terms of the CBA, a late fee charge of one percent (1%) per month of the unpaid delinquent contributions is assessed a signatory contractor delinquent in submitting monthly Funds contribution payments (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 8).

10. As of December 1, 2005, McGlone Plumbing owes late fee charges in the sum certain amount of **Four Hundred Twenty-Four Dollars and Fifty-One Cents (\$424.51)** for late fees that accrued on delinquent contributions from May 2005 through July 2005, including the July 2005 delinquency that remains unpaid at this time.

Plaintiffs are entitled to receive this late fee payment (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 8).

11. Pursuant to the terms of the CBA, Plaintiffs are entitled to recover attorney's fees and costs from Defendant in connection with efforts to collect the aforementioned delinquent contributions and late fees (Attachment A, Affidavit of Roger B. Gill, Plumbers Local No. 12 Trust Funds Administrator, ¶ 9). Pursuant to 29 U.S.C. Section 1132(g) and 28 U.S.C. Section 1961, Plaintiffs are entitled to recover attorney's fees and costs from Defendant in connection with efforts to collect the aforementioned delinquent contributions and late fees. Plaintiffs are entitled to recover **One Thousand Four Hundred Dollars (\$1,400.00)** in attorney's fees and **Two Hundred Ninety-Five Dollars and Eighteen Cents (\$295.18)** in costs for filing the Complaint and serving the Summons and Complaint (Attachment B, Affidavit of Attorney John T. Fussell, ¶¶ 7,8).

12. Plaintiffs rely on the attached Memorandum of Law.

Respectfully submitted,


Robert M. Cheverie, Esq.  
ROBERT M. CHEVERIE &  
ASSOCIATES, P.C.  
333 East River Drive, Suite 101  
East Hartford, CT 06108  
(860) 290-9610  
BBO# 082320

  
Attorney for Plaintiffs

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **APPLICATION TO THE CLERK OF THE COURT FOR ENTRY OF JUDGMENT BY DEFAULT** has been mailed, first-class and postage prepaid, this 28<sup>th</sup> day of December 2005 to the following:

Dan McGlone  
McGLONE PLUMBING, INC.  
111 French Avenue  
Braintree, MA 02184



Robert M. Cheverie

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
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PLUMBERS' UNION NO. 12 LABOR MANAGEMENT  
COOPERATION TRUST FUND,

Plaintiffs

VS.

McGLONE PLUMBING, INC.

Defendant

Civil Action No.  
**05-CV-11510**

**December 28, 2005**

**ORDER  
FOR ENTRY OF JUDGMENT BY DEFAULT**

Defendant McGlone Plumbing, Inc., having not appeared, answered, or defended in this action and the Court having allowed the Notice of Default to issue by Order dated December 14, 2005.

Now, upon application of the Plaintiffs and Affidavits demonstrating that Defendant owes Plaintiffs the sum certain of **Six Thousand Three Hundred Eleven Dollars and Sixty-Four Cents (\$6,311.64)** for delinquent Funds contributions; **Four Hundred Twenty-Four Dollars and Fifty-One Cents (\$424.51)** in unpaid late fees; that Defendant is not an infant or incompetent person or in the military service of the United States; and that Plaintiffs have incurred costs in the amount of **Two Hundred**

***Ninety-Five Dollars and Eighteen Cents (\$295.18)***, and attorney's fees in the amount of ***One Thousand Four Hundred Dollars (\$1,400.00)***, it is hereby

ORDERED, ADJUDGED and DECREED that Plaintiffs recover from Defendant McGlone Plumbing Inc. Funds contributions in the amount of **\$6,311.64**, late fees in the amount of **\$424.51**, costs in the amount of **\$295.18**, and attorneys fees in the amount of **\$1,400.00**, for a total judgment of **\$8,431.33**.

Plaintiffs may also recover post-judgment interest as provided by law.

By the Court,

Dated: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk

# EXHIBIT A



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,  
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**December 28, 2005**

**AFFIDAVIT OF ROGER B. GILL**

The undersigned, Roger B. Gill, being duly sworn, hereby deposes and states:

1. I am over the age of eighteen (18) years and understand the meaning and obligation of an oath.
2. I am employed by the Trustees of the Plumbers and Gasfitters Local Union No. 12 Welfare, Pension, Annuity Vacation & XMAS and Fringe Benefit Funds as the Administrator of the Funds. As such, I am personally familiar with the facts stated herein.

3. At all relevant times, McGlone Plumbing, Inc. was and is signatory to a Collective Bargaining Agreement with Plumbers and Gasfitters Local Union No. 12.

4. McGlone Plumbing, Inc. employed plumbers covered by the Collective Bargaining Agreement during the time of January 1, 2005 through July 31, 2005.

5. Pursuant to the Collective Bargaining Agreement, McGlone Plumbing, Inc. agreed to pay the Funds certain sums at rates identified in the Collective Bargaining Agreement for each hour worked by plumbing/apprentice employees of McGlone Plumbing, Inc.

6. Pursuant to the Collective Bargaining Agreement, McGlone Plumbing, Inc. agreed to submit a Funds report each month detailing the name of its covered employees, the hours worked by each covered employee and the Funds contributions owed in total for each month.

7. The Funds report submitted by McGlone Plumbing, Inc. for the month of July 2005 demonstrates that McGlone Plumbing, Inc. owes the Funds the sum certain of **\$6,311.64** for that month. This undisputed sum certain remains owing by McGlone Plumbing, Inc.

8. Pursuant to the Collective Bargaining Agreement, a contractor delinquent in the monthly Funds obligation is assessed a late fee charge of one percent (1%) per month of the unpaid delinquent Funds balance. As of December 1, 2005, McGlone Plumbing owes the undisputed sum certain of **\$424.51** in late fee charges for monthly delinquencies from May 2005 through July 2005.

9. Pursuant to the Collective Bargaining Agreement, a delinquent contractor is liable to the Funds for attorney's fees and costs expended in the collection of delinquent Funds contributions. The sum certain costs for filing the ERISA collection Complaint and serving the Summons and Complaint upon McGlone Plumbing, Inc. total **\$295.18** and the attorney's fees associated with this action total **\$1,400.00**.

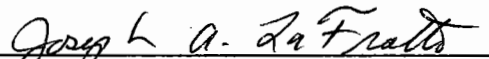
10. Defendant McGlone Plumbing, Inc. is neither an infant nor incompetent nor in the military service of the United States.

DATED this 22<sup>nd</sup> day of December 2005, at Boston, Massachusetts.

  
\_\_\_\_\_  
Roger B. Gill,

Subscribed and sworn to before me this 22 day of December 2005.

*Commission Expires*  
*November 15, 2007*

  
\_\_\_\_\_  
Notary Public

# EXHIBIT B

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TRUSTEES OF THE PLUMBERS AND GASFITTERS'  
LOCAL UNION NO. 12 WELFARE, PENSION, ANNUITY,  
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**December 28, 2005**

**DECLARATION OF JOHN T. FUSSELL**

I, JOHN T. FUSSELL, of Robert M. Cheverie & Associates, P.C., counsel of record for Plaintiffs, Trustees of Plumbers and Gasfitters' Local Union No. 12 Welfare, Pension, Annuity, Vacation & XMAS and Fringe Benefit Funds (hereinafter the "Funds"), hereby certify, declare and verify under penalty of perjury, pursuant to 28 U.S.C. 1746, this 28<sup>th</sup> day of December 2005, the following:

1. I am an attorney with the law firm of Robert M. Cheverie & Associates, P.C., the counsel of record for Plaintiffs.
2. I have reviewed the governing Collective Bargaining Agreement, the Plan Documents of the Plaintiff Funds, as well as the Funds Report for the month of July

2005 submitted to the Funds by McGlone Plumbing, Inc. Consistent with the terms of those documents and the Funds Report for the month of July 2005 submitted by McGlone Plumbing, the Funds are entitled to payment from McGlone Plumbing of the delinquent Funds contributions for the month of July 2005 in the sum certain amount of **\$6,311.64**. Likewise, consistent with the terms of the aforementioned documents, the Funds are entitled to payment from McGlone Plumbing of late fee charges on delinquent contributions at the rate of one percent (1%) per month of the unpaid delinquency balance. As of December 1, 2005, McGlone Plumbing owed the Funds the sum certain amount of **\$424.51** in late fees that accrued on delinquent contributions from May 2005 through July 2005 and continues to accrue on the unpaid July 2005 delinquency.

3. The governing documents, including the Collective Bargaining Agreement and the Plan Documents, provide that in the event litigation becomes necessary to collect delinquent Funds contributions and late fees, a delinquent contractor shall be liable for the expense of such collection action including the Funds' attorney's fees and costs.

4. The law firm of Robert M. Cheverie & Associates, P.C. expended seven (7) hours in the above-captioned case on behalf of the Plaintiffs in drafting and filing the Complaint, and drafting the Motion for Default and drafting the documents in connection with the instant Entry for Judgment by Default.

5. The amount of time expended is within the usual and customary time spent for an attorney on this type of case.

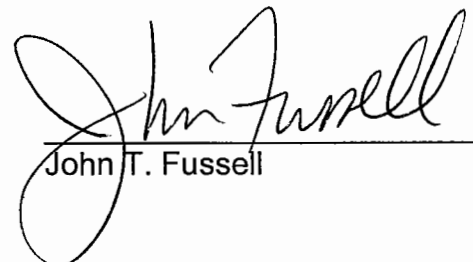
6. Robert M. Cheverie & Associates, P.C. has negotiated a fee of Two Hundred Dollars (\$200.00) per hour for attorney time with its clients for the performance of this type of legal representation. We believe that this hourly fee is at or below the usual and customary fee charged for this type of work.

7. Plaintiff's counsel respectfully requests the Court to grant Plaintiffs' attorney fees in the amount of **\$1,400.00**.

8. This law firm has incurred costs of **\$295.18** to prosecute this action. Specifically, **\$250.00** was incurred to file the Complaint and **\$45.18** was incurred to have the Summons and Complaint served upon the Defendant by the Sheriff's Office.

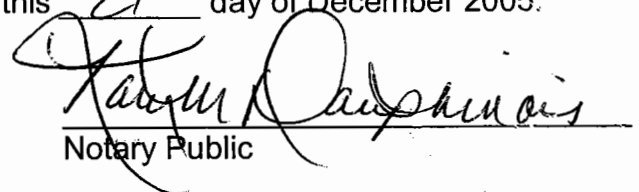
9. Defendant McGlone Plumbing, Inc. is neither an infant nor incompetent nor in the military service of the United States.

DATED this 28<sup>th</sup> day of December 2005, at East Hartford, Connecticut.



John T. Fussell

Subscribed and sworn to before me this 21<sup>st</sup> day of December 2005.



Notary Public

**KAREN M. DAUPHINAIS**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES JULY 31, 2007